

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUGUSTINE HERNANDEZ,

Petitioner,

CASE NO. 2:06-CV-12037

v.

HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

JAN TROMBLEY,

Respondent.

/

OPINION AND ORDER DENYING THE MOTION FOR COMPLAINT

On April 4, 2007, this Court issued an opinion and order summarily dismissing Petitioner's application for writ of habeas corpus on the ground that the petition had not been filed in compliance with the one year statute of limitations contained in 28 U.S.C. § 2244(d)(1). This Court also denied Petitioner a certificate of appealability and leave to appeal *in forma pauperis*. *See Hernandez v. Trombley*, No. 2007 WL 1041253 (E.D. Mich. April 4, 2007). The United States Court of Appeals for the Sixth Circuit ultimately denied Petitioner a certificate of appealability and dismissed his appeal. *See Hernandez v. Trombley*, U.S.C.A. No. 07-1613 (6th Cir. January 2, 2008). Pending before this Court is Petitioner's "Motion for Complaint," in which he essentially asks this Court to review the merits of the claims that he raised in his habeas petition, particularly his ineffective assistance of counsel claim.

The Antiterrorism and Effective Death Penalty Act's statute of limitations must be complied with by a habeas petitioner before a federal court can address the merits of the

habeas petition itself. *See Sweger v. Chesney*, 294 F. 3d 506, 518-19 (3rd Cir. 2002). A merits decision is unnecessary where a district court denies a habeas petition on statute of limitations grounds. *See Bachman v. Bagley*, 487 F.3d 979, 982 (6th Cir. 2007). Because Petitioner's habeas application was untimely, the Court did not err in declining to address the merits of Petitioner's substantive claims. Accordingly, the Court will deny Petitioner's motion.

Based upon the foregoing, **IT IS HEREBY ORDERED** that Petitioner's Motion for Complaint [Dkt. Entry # 21] is **DENIED**.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: July 23, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se petitioner by electronic means or U.S. Mail on July 23, 2008.

s/Carol A. Pinegar

Deputy Clerk